



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01824
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/24/2015

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He is delinquent on approximately \$85,000 in student loans owed to one lender and \$58,800 owed to another creditor. He has five additional unpaid collection accounts totaling approximately \$3,000. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on June 27, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On July 18, 2014, Applicant answered the SOR and elected to have the matter decided without a

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated January 30, 2015. The FORM contained nine attachments (Items). On February 19, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. No documentation was received from Applicant. On April 27, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted the 21 accounts placed for collection. He asserted he was attempting to consolidate his student loan debt and would have to research the other debts. (Item 4) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 43-year-old business application administrator who has worked for a defense contractor since May 2013 and seeks to obtain a security clearance. (Item 5) He had two periods of schooling during which he incurred \$80,000 in student loans during his first period and \$40,000 during his second period of education. (Item 9) He indicated on his Electronic Questionnaires for Investigations Processing (e-QIP) that his student loans were delinquent. (Item 5) In December 2007, his schooling ended and repayment of the student loans was to commence in June 2008. He made partial monthly payments until December 2008, when he stopped making payments. From June 2010 until May 2013, his wages were garnished to pay his student loans. In May 2013, payments stopped and, as of his January 2014 personal subject interview (PSI), he had had no contact concerning his student loans. (Item 9)

In Applicant's January 2014 Personal Subject Interview (PSI), he stated it was his intent to contact the lender in order to make payment arrangements or to modify his loans in an attempt to satisfy the debt. His credit reports lists \$84,793 owed one creditor for eight student loans and owed to another creditor \$58,811 for eight other student loans. (Items 6, 7, and 8)

Other than Applicant's student loans, he has five additional collection accounts totaling approximately \$3,000. In his SOR answer, he indicated he had to research these debts because he did not know the nature or source of the debts. Applicant did not provide documentation showing payment on any of his debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant has more than \$143,000 of delinquent student loans. He also has four collection accounts that remain unpaid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control. He has provided no documentation showing payment on any of his debts. Even the four smaller debts of less than \$500 each remain unpaid. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant has been asked about these obligations starting in January 2014. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. There is no showing of circumstances beyond his control. The mitigating condition listed in AG ¶ 20(c) does not apply. Applicant has not received financial counseling. Additionally, there is no clear showing that his financial obligations are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The garnishment of his wages, which ended in May 2013, to address the student loans is not considered a good faith effort to repay creditors. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. He admitted all of the debts, but indicated he would have to do further research concerning five of them that were not student loans.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The majority of the debt set forth in the SOR was not incurred on luxuries, but for student loans. This is not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. However, Applicant has failed to document any payment on those loans. He has been aware of the Government's concern about his delinquent debts since his January 2014 PSI, which was reinforced in the June 2014 SOR. No delinquent debts have been paid and there is no documentation Applicant has recently contacted his creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on his paragraphs of explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:    **AGAINST APPLICANT**

Subparagraphs 1.a – 1.u:

Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge